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CAPITAL ONE BANK and
8 CAPITAL ONE SERVICES, INC.

9
10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 DAVID J. LEE, an individual and, on behalf
of others similarly situated,

14 Plaintiff,

15 v.

16 CAPITAL ONE BANK and CAPITAL
17 ONE SERVICES, INC., Virginia
corporations, DOES 1 through 100,
18 inclusive,

19 Defendants.
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Case No. C07-4599 MHP

CLASS ACTION

**REQUEST FOR JUDICIAL NOTICE RE
DEFENDANTS' MOTION AND MOTION
TO DISMISS FOR LACK OF SUBJECT
MATTER JURISDICTION OR, IN THE
ALTERNATIVE, FOR JUDGMENT ON
THE PLEADINGS**

Date: January 14, 2008
Time: 2:00 p.m.
Place: Courtroom 15
Hon. Marilyn Hall Patel

Complaint filed: Sept. 5, 2007

1 Pursuant to Federal Rule of Evidence 201, defendant Capital One Bank respectfully
2 requests that this Court take judicial notice of the following documents and matters contained
3 therein, which are attached hereto as Exhibits A through I:

4 A. Attached hereto as Exhibit A is a true and correct copy of the November 30, 2007
5 hearing transcript from *Lee v. American Express Travel Related Services*, No. C 07-04765 CRB
6 (N.D. Cal.).

7 B. Attached hereto as Exhibit B is a true and correct copy of the Memorandum and
8 Order filed December 6, 2007 in *Lee v. American Express Travel Related Services*, No. C 07-
9 04765 CRB (N.D. Cal.).

10 C. Attached hereto as Exhibit C is a true and correct copy of the Complaint filed
11 September 17, 2007 in *Lee v. American Express Travel Related Services*, No. C 07-04765 CRB
12 (N.D. Cal.).

13 D. Attached hereto as Exhibit D is a true and correct copy of Assembly Bill No. 292,
14 1970 Reg. Sess. (Jan. 21, 1970).

15 E. Attached hereto as Exhibit E is a true and correct copy of Assembly Bill No. 292,
16 1970 Reg. Sess (Jan. 21, 1970) (as amended Aug. 7, 1970).

17 F. Attached hereto as Exhibit F is a true and correct copy of the Order Granting In
18 Part and Denying In Part MBNA's Motion to Dismiss, filed February 17, 2006 in *Lowman v.*
19 *MBNA America Bank, N.A.*, No. CV 05-7501 ER (C.D. Cal.).

20 G. Attached hereto as Exhibit G is a true and correct copy of the Order Granting In
21 Part and Denying In Part Bank of America, N.A.'s Motion to Strike Allegations of Consolidated
22 Complaint and Capital One Services, Inc. and Capital One Bank's Motion to Strike Fifth
23 Amended Complaint, filed August 7, 2003, in *Utility Consumers' Action Network v. Capital One*
24 *Services, Inc.*, JCC No. 4191 (San Francisco Super. Ct.).

25 H. Attached hereto as Exhibit H is a true and correct copy of the Order Granting
26 Defendant WMC Mortgage Corp.'s Motions *In Limine* Nos. 1, 2, and 4, Denying WMC Mortgage
27 Corp's Motion *In Limine* No. 3, and Denying Plaintiff's Motion For Leave To Amend, filed
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1 June 1, 2005, in *Barbera v. WMC Mortgage Corp.*, No. CGC-01-322066 (San Francisco Super.
2 Ct.).

3 I. Attached hereto as Exhibit I is a true and correct copy of the Order Sustaining
4 Demurrer to All Three Causes of Action of the First Amended Complaint With Leave to Amend,
5 filed July 28, 2006 in *Shie v. American Express Centurion Bank*, No. BC 345823 (L.A. Super.
6 Ct.).

7 Good cause exists for the Court to grant judicial notice of these documents because they
8 are matters of public record. *See Lee v. City of Los Angeles*, 250 F.3d 668, 688-89 (9th Cir. 2001)
9 (holding that “under Fed. R. Evid. 201, a court may take judicial notice of ‘matters of public
10 record’” when ruling on a Rule 12(b)(6) motion to dismiss); *see also MGIC Indem. Corp. v.*
11 *Weisman*, 803 F.2d 500, 504 (9th Cir. 1986).

12 Dated: December 10, 2007

MORRISON & FOERSTER LLP

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14 By: /s/ James R. McGuire
James R. McGuire

15 Attorneys for Defendants CAPITAL ONE
16 BANK and CAPITAL ONE SERVICES, INC.
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